



METHOD OF IMPLEMENTING RESERVATION POLICIES: OUT-MIGRATION AND IN-MIGRATION PROBLEMS

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INTRODUCTION:

The Indian Constitution aims at achieving substantive equality in the society. As part of this process it provides provisions for the empowerment of deprived / weaker sections of the society. For instance, Article 14 laying down the right to equality, Article 15(2)(3)(4)(5) and Article 16(2)(4)(4-A)(4-B) providing for protective discrimination, Article 330 providing for reservation of seats for Scheduled Castes and Scheduled Tribes in the Lok Sabha, Article 332 providing for reservation of seats for Scheduled Castes and Scheduled Tribes in the Assemblies of States, Article 338 providing for National Commission for Scheduled Castes, Article 338-A providing for National Commission for Scheduled Tribes, Article 340 providing for appointment of a Commission by the President for investigating the socio-economic conditions of the Backward Classes, Article 341 providing for definition of Scheduled Castes, Article 342 providing for definition of Scheduled Tribes are meant for ameliorating the socio-economic conditions of the weaker sections of the society by empowering them. At times problems may crop up at implementation stage due to either some expression/phrases used in the sustentative law or in evolving suitable procedures for implementing the reservation policies. One such problem that is dealt with in this paper is the problem of Out-Migration and In-Migration vis-à-vis Scheduled Castes and Scheduled Tribes. The definition of Scheduled Castes and Scheduled Tribes are mentioned in Article 341 & 342 respectively, which are analyzed below.

ARTICLE 341 & 342:

These two Articles, which fall in part XVI of the Constitution provides as follows: Article 341(1) provides that the President may with respect to any State or Union Territory, and where it is a State after consulting with the Governor thereof by public notification, specifying the castes, races or tribes or parts or groups within the castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State or Union Territory, as the case may be. Article 341 (2) provides that inclusion in and exclusion of any Scheduled Caste from the notification given by the President can be made only by the Parliament.

Article 342 (1) provides that the President may with respect to any State or Union Territory and where it is a State after consultation with the Governor thereof, by notification specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purpose of this Constitution be deemed to be Scheduled Tribes in relation to that State or Union Territory, or as the case may be. Article 342 (2) provides that inclusion in and exclusion of any Scheduled Tribe from the notification can be made only by the Parliament.

Explaining this scope of power of the President under Article 341(1) a Constitution-Bench¹ of the Supreme Court in *Bhaiya Lal vs Harikishan Singh*² stated that “the object of Article 341(1) is plainly to provide additional protection to the members of the Scheduled Castes having regard to the economic and educational backwardness from which they suffer. Before a notification is issued under Article 341(1), an elaborate enquiry is made and it is as a result of this enquiry that social justice is sought to be done to the castes, races or tribes as may appear to be necessary, and in doing justice, it would obviously expedient not only to specify parts or groups of castes, races or tribes, but to make the said specification by reference to different areas in the State. Educational and social backwardness in regard to these castes, races or tribes may not be uniform or of the same intensity in the whole of the State, it may vary in degree or in kind in different areas and that may justify the division of the State into convenient and suitable areas for the purpose of issuing the public notification in question. The notification issued by the President by reference to the different areas is not therefore, outside his authority under Article 341(1)”³.

Interpreting the expression “in relation to that State” occurring in Article 341 & 342, the Orissa High Court explained in *K. Appa Rao vs Director of Posts and Telegraphs*⁴ that this expression “in relation to that State” shows that in order to get the benefit of being a member of a Scheduled Caste or Scheduled Tribe in the matter of public employment, the person claiming it should be a member of such caste or tribe in relation to the particular area or State where he is residing and where he seeks employment. Therefore, it is clear that particular Scheduled Tribes specified in various Parts of the Schedule to that Order are recognized as

Scheduled Tribes only for the particular area including in those parts of the Schedule and not any where else. So, any reference to Scheduled Castes or Scheduled Tribes must be intended to be relatable to the Scheduled Castes and Scheduled Tribes in relation to that particular area or State as appearing in the Schedule to that Order⁵.

In *K. Appa Rao vs Director of Posts and Telegraphs*⁶, the petitioner, resident of Orissa, belonging to Konda Kapu, a Scheduled Tribe in the neighboring Andhra Pradesh. He was appointed as a clerk in the Posts and Telegraphs department in 1956 and after passing examination he was promoted to Inspector of Posts and Telegraphs against a vacancy reserved for Scheduled Tribe. His order was reversed in 1964 on the ground that Konda Kapu is not in Scheduled Tribe in the list of Orissa although it was in the list of Andhra Pradesh. When this reversion order was challenged before the Orissa High Court on the ground that Section 2 of the Public Employment (Requirement as to Residence) Act 1957 outlawed “Residence” requirement in Public Employment in Central Government Jobs, the Orissa High Court ruled that to get the benefit of being a members of Scheduled Caste or Scheduled Tribe in the matter of Public Employment the person claiming it should be a member of such caste or tribe in relation to the particular area or State where he is residing and where he seeks employment. Section 2 of the Public Employment (Requirement as to Residence) Act 1957, cannot override the provision of the Constitution⁷. The Court further observed that the petitioner is not a member of a Scheduled Tribe in relation to Orissa State. Admittedly Konda Kapu is mentioned in the list of Scheduled Tribes in Andhra Pradesh in the Constitution (Scheduled Tribe) Order 1950 and does not find mention in any of the Scheduled Tribes in Orissa under that Order. Therefore the petitioner cannot claim, while residing in Orissa, the benefit of his being a member of a Scheduled Tribe in another State, for the purpose of Public Employment. The Court noted that the erroneous description in the certificate issued to him by the Tahasildar of a Parlakhimedi (Orissa) cannot confer any right on him⁸. With due respect, it is submitted that here the Court applied the Principle of Literal Construction to the expression “in relation to that State” (which is mentioned above) that resulted the ultimate outcome which is inconsistent with the objectives of the Constitution which aimed at Empowerment of the Weaker section of the Society.

This legal position has created certain problems for migrants among the Scheduled Castes and Scheduled Tribes Communities. A renowned jurist⁹ classified these problems into out-migration and in-migration cases.

OUT-MIGRATION:

It refers to a situation where ‘X’ leaves a State where Xs are Scheduled Castes and goes to a State where they are not so listed. Such persons are not allowed to enjoy the reservation as per the prevailing Order. Thus in *Jyothi Bushan vs Bodh Ram Sharma*¹⁰ involved the moment of “Dusadh” community member. A Dusadh community person moved his residence from Bihar, where Dusadh was a Scheduled Caste to Madhya Pradesh where they were not so listed. He was held not a member of a Scheduled Caste for the purpose of making a lower deposit while filing nomination papers which is allowed for Scheduled Castes in that State.

However, a different line of approach was taken by Gujarat High Court quoting a circular issued by the Union Home Ministry. The case in point is *Gujarat vs R.L. Patel*¹¹. In this case the respondent, who belongs to “Dhodia” caste and native of Union Territory of Dhadra and Nagar Havali which is a Scheduled Tribe, applied to a post in response to an advertisement given by the Gujarat Public Service Commission. As per the advertisement candidates of Gujarat origin are entitled for the benefit of the reservation meant for Scheduled Castes and Scheduled Tribes and Economically and Educationally Backward Classes category. His candidature was rejected by the Commission on the reason that he was not of Gujarat origin. When this was challenged before the Gujarat High Court relying on a circular issued by the Ministry of Home Affairs which specified that if a person is a Scheduled Tribe in the state of his origin, he will not lose that status in the State where he has migrated, the High Court observed that “cancellation of admission of a candidate belonging to Scheduled Tribe i.e. “Dhodia Caste” in the Union Territory of Dhadra and Nagar Havali by the Gujarat Public Service Commission on the basis that he is not entitled to the benefit of reservation in the category of a Scheduled Tribe since he is not of Gujarat origin, is improper as there was no dis-

pute with regard to Dhodia Caste belonging to Scheduled Tribe as they are treated as Scheduled Tribes both at Union Territory of Dhadra and Nagar Haveli and also in Gujarat. The Court applying the beneficial rule of construction to the Home Ministry circular (dated 18-11-1982), further stated that this is a beneficial circular in favour of Scheduled Castes and Scheduled Tribes and has made it clear that if a person is a Scheduled Tribe in the State of his origin, he will not lose that status in the State he has migrated¹². With due respect, it is submitted that there is not clarification in the Judgment as to whether the Scheduled Tribe status is given to the respondent relying on the position that Dhodia caste is Scheduled Tribe in both the States or Scheduled Tribes status is conceded to the respondent on the basis of the circular of the Home Ministry. Further it is not clear as to whether this circular applies only to the residence of Union Territory of Dhadra and Nagar Haveli or to the entire Country. The need of the hour is to issue such circular which will be applicable through out the Country to solve this burning problem.

IN-MIGRATION:

This refers to a situation where "X" moves from an area in which Xs are not Scheduled Castes to an area where they are so listed. Even in this situation also instead of including Xs as Scheduled Castes they were rejected the reservation status. The case in point is M.R.Lalwani vs The Collector, Jabalpur¹³. The factual matrix of the case is that, the petitioner, Dr. M.R.Lalwani is a medical practitioner, residing at New Basti, Katni, in Jabalpur District, Madhya Pradesh. He is a refugee from the West Pakistan and has settled on rehabilitation at Katni. The Tahasildar issued a certificate to M.R.Lalwani a "Suryabanshis", a Scheduled Caste, and this was cancelled by the Collector on the ground that Sindhi refugees coming from West Pakistan were not declared as members of the Scheduled Castes. The petitioner argued that "Lalwani" was of "Suryabanshis" caste and hence he must be treated as Scheduled Castes as "Suryabanshis" in Jabalpur District is listed as Scheduled Caste. The Madhya Pradesh High Court ruled that migrant "Suryabanshis" coming to Jabalpur cannot be considered as Scheduled Caste as "Suryabanshis" of Jabalpur District alone are listed as Scheduled Castes under the Presidential Order¹⁴.

CONCLUSION:

Although the Constitution provides substantive provisions assuring reservation policies there is difficulty in the method of implementing reservation policies. Whatever rule or interpretation that is adversely affecting the implementation of reservation policies that has to be changed by making procedures congenial for achieving the Constitutional goals. Since the Constitution of India (Scheduled Castes) Order 1950 and Constitution of India (Scheduled Tribes) Order 1950 were issued in 1950 and since Re-organisation of States was made in 1956, this has resulted in some anomalies in the lists of Scheduled Castes and Scheduled Tribes in different areas in the Country. Hence, the following suggestions may be adhered to in removing the anomalies in this area.

1. The expression "in relation to that State" occurring in Article 341(1) and Article 342(1) should be removed by a suitable amendment to the Constitution as this expression became a hindrance in the eligibility criteria basing upon geographical areas.
2. The Public Employment (Requirements as to Residence) Act 1957 must be scrupulously implemented which outlawed residence requirements in Central Government Jobs.
3. A Uniform List should be maintain for all Scheduled Castes and Scheduled Tribes communities through out the Country for the Central Government Jobs. Once a caste is declared a Scheduled Caste / Scheduled Tribe it should be Scheduled Caste / Scheduled Tribe for the purposes of this Constitution within the meaning of Article 341 & 342.

These steps are necessary to promote occupational mobility among the reserved classes which is essential not only for the advancement of these reserved classes but also for the Unity and Integrity of the Country.

END NOTES:

1. The Bench consisted of P.B.Gajendragadkar, C.J., K.N.Wanchoo, M. Hidayatullah, J.C. Shah and S.M. Sikri, JJ.
2. AIR 1965.SC.1557.
3. Ibid-at1560, para-10.
4. AIR 1969.Ori.220.
5. Ibid at221-222, paras-5&6
6. AIR 1969 Ori. 220.
7. Ibid at 221. para-5
8. Ibid at-222, para-8
9. See Marc Galanter "The Competing Equalities: Law and Backward Classes in India" (New Delhi : OUP: 1984) pp.141-142.
10. 1974. MP.LJ. / 565-cited from Mark Gaalanter, opp.cited.
11. AIR 1992 Guj.42
12. Ibid at 45, para-6

13. AIR 1976 M.P. 44

14. Ibid at 45, para-6